No. 85-527

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JOSEPH F. SPANIOL, JR.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

FAITH CENTER, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

DR. w. euGENE SCOTT,

Intervenor-
Respondent.

BRIEF OF INTERVENOR-RESPONDENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

1. Whether the religion clauses of the First Amendment require the Federal Communications Commission to afford Faith Center, Inc., a religious broadcaster, a hearing on its claims that responding to discovery requests would violate the tenets of the church and the religious beliefs of its adherents, prior to imposing sanctions for Faith Center's refusal to respond.

2. Whether Faith Center, Inc., a religious broadcaster, could properly refuse to comply with discovery demands on the ground that they were overbroad and thus threatened the free exercise of its religious beliefs, and the beliefs of its members.

PARTIES INVOLVED

The parties involved in this petition are Faith Center, Inc., petitioner, and the Federal Communications Commission, respondent. Petitioner Faith Center, Inc. has no parent companies or subsidiaries, within the meaning of Sup. Ct. R. 28.1. Wescott Christian Center and Full Gospel Fellowship of Churches and Ministers International, of both of which Dr. w. euGene Scott is president, may be affiliates, within the meaning of the rule.

The following individuals and corporations were parties in the court below and are respondents in this Court pursuant to Sup. Ct. R. 19.6: West Coast United Broadcasting Company, Wescott Christian Center, Dr. w. euGene Scott, Lucille E. Johnston, and New Inspiration Broadcasting Co., Inc.*

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* As explained more fully below, this

petition seeks review of two cases: District of Columbia Circuit Nos. 84-1085 and 83-2295. West Coast United Broadcasting Company was an intervenor in case No. 84-1085. Wescott Christian Center, Dr. w. euGene Scott, Lucille E. Johnston, and New Inspiration Broadcasting Co., Inc. were intervenors in case No. 83-2295.

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Joining with the petitioner, Faith Center, Inc., Intervenor-Respondent Dr. w. euGene Scott respectfully prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia Circuit entered in these proceedings on May 9, 1985.

OPINIONS BELOW

The per curiam order and judgment of the court of appeals in its case No. 84-1085 ("the San Francisco proceeding") is unreported and is set forth in Appendix A, pp. 1a-2a of Faith Center's Petition. The per curiam order and judgment of the court of appeals in its Case No. 83-2295 ("the Los Angeles proceeding") is unreported and is set forth in Appendix B, pp. 3a-4a of Faith Center's Petition. The order of the Federal Communications Commission in the San Francisco proceeding is unreported and appears in Appendix C, pp. 5a-6a of Faith

Center's Petition. The order of the Federal Communications Commission in the Los Angeles proceeding is unreported and appears in Appendix D, pp. 7a-14a of Faith Center's Petition. The Memorandum Opinion and Order of the Review Board in the San Francisco proceeding is reported at 94 F.C.C. 2d 756 and appears in Appendix E, pp. 15a-21a of Faith Center's Petition. The Memorandum Opinion and Order of the Review Board in the Los Angeles proceeding is reported in 92 F.C.C. 2d 1255 and appears in Appendix F, pp. 22a-32a of Faith Center's Petition. The Memorandum Opinion and Order of the Administrative Law Judge in the San Francisco proceeding is unreported and appears in Appendix G, pp. 33a-37a of Faith Center's Petition. The Memorandum Opinion and Order of the Administrative Law Judge in the Los Angeles Proceeding is unreported and appears in Appendix H, pp. 38a-51a of Faith Center's Petition.

JURISDICTION

The judgments below in both the San Francisco and the Los Angeles proceedings were entered on May 9, 1985. (App. A and B, pp. 1a-3a of Faith Center's Petition.) A timely petition for rehearing in the San Francisco proceeding was denied on July 8, 1985. (App. I, p. 52a of Faith Center's Petition). A timely petition for rehearing and suggestion for rehearing en banc in the Los Angeles proceeding was denied on July 2, 1985. (App. J, p. 53a of Faith Center's Petition). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Interventor-Respondent Dr. w. euGene Scott appears pursuant to Sup. Ct. R. 19.6.

CONSTITUTIONAL PROVISION INVOLVED

The religion clauses of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." U.S. Const. amend. I.

STATEMENT

Intervenor-Respondent, Dr. w. euGene Scott, (hereafter, Dr. Scott) seeks to intervene in this proceeding for the reason that Petitioner, Faith Center, Inc., the Church which Dr. Scott Pastors, is now in jeopardy of losing all of its broadcast licenses for adhering to Christian teachings. As Pastor and teacher of the Congregation, Dr. Scott has led the fight against unwarranted government intrusion into sacred matters. Faith Center is, and has been for 38 years, a Church of congregational polity. The Congregation governs, and should the Pastor in any way violate the trust placed in him or her, the Congregation which elected that Pastor could eject that Pastor with equal ease. However, as Pastor and teacher, Dr. Scott wishes to bring the following to the attention of this honorable Court.

Stripped of the FCC's fabrications and red herrings, the facts of this proceeding

are simple. After his termination for falsifying time cards, one employee with no knowledge of the business affairs of the Church wrote one letter to the FCC in which he stated that he had seen monies raised for projects he had not seen completed. In eight years of prosecution by the FCC, no other complaints have been lodged against this licensee, and the original complainant has stated under oath that he knew of no wrongdoing at the Church during his time of tenure. Yet, the FCC without witnesses, evidence or any probable cause continues to justify their actions by quoting by rote the language of RKO General, Inc. v. FCC, 670 F.2d 215 (C.A. D.C. 1981): Petitioner "was playing the dodger to serious charges." What then are the serious charges? In RKO the serious charges to which the Court referred included by the applicant's own admission bribery, fraud, and numerous

violations of the Sherman Act. There, the applicant lost some, but not all of its licenses. The corporation remains a licensee of the FCC in a number of major cities including Los Angeles.

In the instant proceeding, Faith Center stood accused of soliciting funds to construct a "Fountain of Faith," buy studio lights and microphones and repair the roof of its building. It was further accused of not spending the funds so raised for these purposes. After eight years of intensive investigation, these charges bereft of witnesses and evidence remain the sole grounds for the FCC's persecution of Faith Center. These are the examples of "Fraud by Wire" against which the FCC must stand guard.

The Joint Appendix in this proceeding (J.A. 1707-1874 passim) shows that Faith Center cooperated fully with the FCC. Receipts, invoices, ledgers and affidavits

were delivered to this agency showing that each dollar raised, and more, was spent for its intended purpose. Faith Center sent its own attorneys at its own expense to Washington, D.C. to be deposed by FCC attorneys (J.A. 3320-3938). To any person viewing the situation objectively, and without ulterior motives, Faith Center has disproved the charges beyond any reasonable doubt. It took this burden of proof upon itself, as it might have to under some less enlightened government, and met it.

But, for reasons known only to its members, the FCC elected to remain unconvinced. When it demanded that Faith Center turn over lists of its donors including names and addresses and amounts given, the Church could not comply. Contrary to FCC allegations, Faith Center never denied its responsibilities as a licensee of the FCC, yet it did not feel in all innocence that

it should be forced to violate its Christian beliefs to abide by those responsibilities. It was willing to salute the FCC, but not willing to bow to it. The Laws of God, in the Congregation's eyes, were superior to the laws of man.

Matthew 6:1-4 commands that a donation, which is a sacrifice to God, be given in secret. To publish the gift before men is to abrogate the effect of the sacrifice. As noted in Faith Center's Petition, this concept is also part of the Talmudic tradition. In the instant context, the religious injunction has practical consequences. Faith Center's Broadcast Ministry allows the Christian message to be admitted into private homes along with the sex, violence and commercialism condoned and blessed by the FCC. Many viewers who supported the ministry had and have spouses of different faiths. Support, except in secret, could cause serious

difficulties. Further, the philosphy of this Court in such cases as N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958) is applicable here.

The record shows clearly the dishonesty and shifting position of the FCC on this issue. First, the church was told after the sensitivity of the matter was brought to the FCC's attention that the records would not be required. Thereafter, the demand for these donor records was coyly included in the FCC's interrogatories. Refusal to respond to this same demand on seven separate occasions constitutes the lack of cooperation used to justify the denial of faith Center's licenses.

It was after the perfidy of the FCC was revealed by these demands that Dr. Scott began to make unfavorable comments regarding the FCC, their employees and their policies over the airwaves. This action, not any

fraud by wire or any other nebulous "serious charges" is the reason Faith Center's license renewal applications were denied. Since its inception over fifty years ago, the personnel of the FCC has been used to a very large degree of unchallenged power. Any person in possession of a broadcast license in a major metropolitan area is in possession of a gold mine. To do battle with the FCC except when caught in the commission of a crime as in RKO or when constitutional principles are involved is economic suicide. That broadcasters involve themselves in a variety of shady dealings does not surprise or shock the FCC nor does it make such persons less worthy of a broadcast license. The recent accusations against CBS and the RKO action itself bear this out. What is intolerable to the FCC is any challenge to their power. To do so, and to use their own airwaves to do so will not be permitted. Dr. Scott and Faith

Center have done so. Dr. Scott and Faith Center must be silenced.

Thus, since the on-air commentary regarding the FCC began, the FCC has engaged in a desperate attempt to find anything to justify the denial of the licenses which was a foregone conclusion. The known sensitivity of the donor records was one way, and the FCC even refused Faith Center's offer to deliver these records with the names and addresses of the donors blacked out. (J.A. 2947-2951). There has never been a hearing on the matter; never a judicial determination of the constitutional issue involved. Further, aside from the echoing song of fraud by wire, serious charges and lack of cooperation, Faith Center has been accused, groundlessly of course, of anti-semitism, newspapers throughout the country have been fed fabrications of FCC personnel, and Dr. Scott's sex life has been subjected to a

secret investigation. Yet, what are the serious charges? Where are the witnesses? There are none, and the FCC knows it. The issue, however, long ago ceased to be one of possible crime or broadcasting responsibility. The issue is now whether or not the FCC can continue to wield unlimited power free from any criticism from its licensees, free to deal with its licensees by whim, free to enjoy a master-slave relationship in the context of an otherwise democratic society.

Without the intervention of this Court, it would seem for the moment that it can. The United States Court of Appeals for the District of Columbia has stated from the bench that a broadcast license is a "favor from the government." With all the respect due to an honorable Justice, an honorable man, favors are not the stuff of which democracies are made. A government run on favors is a breeding ground of corruption. This

proceeding demonstrates that this disease has established a foothold in the FCC. Whether it continues to spread, for the time being at least, will be determined by the action of this Court. Thereafter, it will be determined by the people.

CONCLUSION

For the foregoing reasons, Intervenor-Respondent respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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October 23, 1985